

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEROY SINGLETON,

Petitioner,

v.

JENS MAGELSSSEN,

Respondent.

CASE NO. C06-1764-JCC-MJB

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable John C. Coughenour, United States District Judge:

This matter comes before the Court on Petitioner's filing of a Notice of Appeal (Dkt. No. 43) and the Clerk's construction of this filing as a Motion for Certificate of Appealability (Dkt. No. 44) pursuant to the Antiterrorism and Effective Death Penalty Act, under which an unsuccessful habeas petitioner must be granted a certificate of appealability ("COA") before he can appeal a district court's denial of habeas relief to the Court of Appeals. 28 U.S.C. § 2253(c).

Petitioner apparently seeks to appeal the interlocutory Order (Dkt. No. 40) of United States Magistrate Judge Monica J. Benton, which struck Petitioner's motion for a protective order (Dkt. No. 29) as outside the scope of this habeas corpus action. The Magistrate Judge found that the matters raised therein were "wholly unrelated to the instant habeas action" and that if Petitioner "believes that he has a

meritorious constitutional claim arising out of the conditions of his community custody, he may file a civil rights action under 42 U.S.C. § 1983 to pursue that claim.” (Order (Dkt. No. 40).) Petitioner’s Notice of Appeal suggests that the Magistrate Judge erred in failing to mention that the purpose of the injunction he sought by way of his motion for a protective order was to prevent Respondent from retaliatory actions related to Respondent’s alleged unlawful attainment of Petitioner’s cellular phone number. Regardless of the precise contours of this claim, however, it is nevertheless outside the scope of the instant habeas case. As such, because the Magistrate Judge’s Order (Dkt. No. 40) did not deny habeas relief, a COA is not appropriate.

Accordingly, the Court construes Petitioner’s Notice of Appeal and Motion for Certificate of Appealability as an appeal to the District Judge of a Magistrate Judge’s interlocutory Order. A Magistrate Judge’s ruling on a request for relief that is by its terms outside the scope of the underlying habeas petition is not “dispositive” with respect to the habeas case. Accordingly, Local Magistrate Rule 3 governs this Court’s review thereof. That rule in turn incorporates Federal Rule of Civil Procedure 72(a), which provides that the “district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge’s order found to be clearly erroneous or contrary to law.” This Court cannot find any such error in the Magistrate Judge’s finding that the relief requested by Petitioner is outside the scope of this habeas case and notation that he may pursue a separate § 1983 claim. Therefore, the Court DENIES Petitioner’s Motion for Certificate of Appealability and AFFIRMS the Magistrate Judge’s interlocutory Order. The Court further reminds Petitioner that this Court has not yet ruled on the Magistrate Judge’s Report and Recommendation (Dkt. No. 39) or Petitioner’s subsequent Objections thereto (Dkt. No. 41) and that a COA may be requested after such a ruling, in the event that Petitioner’s habeas petition is dismissed by this Court.

DATED this 25th day of June, 2007.

BRUCE RIFKIN, Clerk of Court

By /s/ C. Ledesma
Deputy Clerk